United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1902.

No. 1171

133

R. PARKER CRENSHAW, AUGUSTUS P. CRENSHAW, SUSIE CRENSHAW, ET AL., APPELLANTS,

vs.

RICHARD P. McCORMICK, MARGARET P. STODDERT, MILLSON McCORMICK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 21, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1902.

No. 1171.

R. PARKER CRENSHAW, AUGUSTUS P. CRENSHAW, SUSIE CRENSHAW, ELIZABETH O. THOMPSON, WIDOW; JOHN F. REED, NANNIE P. REED, MILES K. CRENSHAW, MARY F. CRENSHAW, M. MILLSON CRENSHAW, AND ELIZABETH J. CRENSHAW, APPELLANTS,

vs.

RICHARD P. McCORMICK, MARGARET P. STODDERT, MILLSON McCORMICK, DAVID McCORMICK, FOXHALL P. McCORMICK, LIBBIE McCORMICK, CHARLOTTE C. McCORMICK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 27, 1902.

In the Court of Appeals of the District of Columbia.

R. PARKER CRENSHAW ET AL., Appellants,
vs.
RICHARD P. MCCORMICK ET AL.
} No. 1171.

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a Supreme Court of the District of Columbia.

R. PARKER CRENSHAW, AUGUSTUS P. Crenshaw, Susie Crenshaw, Elizabeth O. Thompson, Widow; John F. Reed, Nannie P. Reed, Miles K. Crenshaw, Mary F. Crenshaw, M. Millson Crenshaw, Elizabeth J. Crenshaw, Complainants,
vs.
RICHARD P. MCCORMICK, MARGARET P. Stoddert, Millson McCormick, David McCormick, Foxhall P. McCormick, Libbie McCormick, Charlotte C. McCormick, Defendants.
} No. 22135. In Equity.

UNITED STATES OF AMERICA,
District of Columbia,
} *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill to Construe Will.*

Filed March 20, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW, AUGUSTUS P. Crenshaw, Susie Crenshaw, Elizabeth O. Thompson, Widow; John F. Reed, Nannie P. Reed, Miles K. Crenshaw, Mary F. Crenshaw, M. Millson Crenshaw, Elizabeth J. Crenshaw, Complainants, *vs.* RICHARD P. MCCORMICK, MARGARET P. Stoddert, Millson McCormick, David McCormick, Foxhall P. McCormick, Libbie McCormick, Charlotte C. McCormick, Defendants.	In Equity. No. 22135, Docket 50.

To the supreme court of the District of Columbia, holding an equity court:

The complainants respectfully state:

1. That they are all citizens of the United States; that R. Parker Crenshaw, Mrs. Elizabeth O. Thompson, Miles K. Crenshaw, Mary Crenshaw, M. Millson Crenshaw, and Elizabeth J. Crenshaw are residents of the District of Columbia; that Augustus P. Crenshaw and Susie Crenshaw are residents of Baltimore, in the State of Maryland; that John F. Reed and Nannie P. Reed are residents of the city of Norfolk, in the State of Virginia; that all these complainants bring this suit in their own right.

2. That the defendants are all citizens of the United States; that Richard P. McCormick is a resident of Towanda, in the State of Pennsylvania; that Margaret P. Stoddert is a resident of
2 Winchester, in the State of Virginia; that Millson McCormick is a resident of Kansas City, in the State of Missouri; that David McCormick, Foxhall P. McCormick, Libbie McCormick, and Charlotte C. McCormick are residents of San Antonio, in the State of Texas, and all are sued in their own right.

3. Complainants further state that all the parties to this cause, both complainants and defendants, are above the age of twenty-one years.

4. That heretofore, to wit, on the 2nd day of March, A. D. 1897, Mary S. Millson, widow, a citizen of the United States and a resident of the District of Columbia, being seized in fee-simple of parts of lots forty-one (41) and forty-two (42) of Francis W. Miller, trustee's, subdivision of part of Pleasant Plains, now called Belle Vue, in the city of Washington, District of Columbia, beginning for the same at a point on the south line of Sheridan street distant thirty-six (36) feet easterly from the northwest corner of said lot numbered forty-

one (41), and running thence easterly in the line of Sheridan street thirty-six (36) feet, thence southerly ninety (90) feet at right angles with Sheridan street, thence westerly and parallel with the south line of Sheridan street thirty-six (36) feet, and thence northerly ninety (90) feet to the place of beginning, according to County Subdivision Book 6, folio 126, of the records of the office of the surveyor of the District of Columbia, departed this life in said District, leaving a last will and testament dated September 19, 1899, together with a codicil dated July 17th, 1895, leaving her surviving as heirs-at-law Elizabeth Ricarda Crenshaw, a sister, and the defendants, the children of
3 Margaret McCormick, also a sister of Mary S. Millson aforesaid, Margaret McCormick having departed this life about fifteen years ago. Copies of the will and codicil aforesaid of Mary S. Millson, deceased, are filed herewith, marked Exhibit "A" and Exhibit "B," and are prayed to be read as a part of this bill.

5. By said will, dated the 19th of September, 1899, after directing the payment of certain general and specific legacies, the said Mary S. Millson bequeathed to her sister, Elizabeth Ricarda Crenshaw, all the rest and residue of her estate, of every description whatsoever, real, personal, and mixed, and appointed her said sister, Elizabeth Ricarda Crenshaw, executrix of the aforesaid will, and directed that she be allowed to qualify without giving security.

6. By said codicil, dated the 17th day of July, 1895, after directing payment of certain general and specific legacies the testatrix, Mary S. Millson, used in said codicil the following language: "All the rest and residue of my property and estate of every description whatsoever, not otherwise bequeathed, having been already devised and bequeathed to my sister, Mrs. A. P. Crenshaw, I need not say more on the subject," the Mrs. A. P. Crenshaw referred to in said codicil being the Elizabeth Ricarda Crenshaw referred to in will of Sept. 19, 1889.

7. That subsequently to the death of Mary S. Millson letters testamentary were granted to Elizabeth Ricarda Crenshaw, the executor under said will, on the 23rd day of April, A. D. 1897, in the supreme court of the District of Columbia, holding an orphans' court, and her estate was fully administered, and her executrix, Elizabeth Ricarda Crenshaw, was fully discharged after pay-
4 ing all the debts and obligations of the said Mary S. Millson.

8. That on the 11th day of September, A. D. 1899, Elizabeth Ricarda Crenshaw departed this life, leaving a last will and testament executed about December, 1897, or about January, 1898, as will more fully appear from the copy of said will, together with the letters testamentary thereon granted, and the affidavits of the witnesses Dorsey Brown, Albert C. West, R. Parker Crenshaw, and August P. Crenshaw, and the official certificate of Louis A. Dent, register of wills in and for the District of Columbia, copies of all of which papers are filed herewith and marked Exhibits "C," "D," "E," "F," and "G."

9. The said Elizabeth Ricarda Crenshaw left surviving her as heirs-at-law the complainants herein, more fully set forth in paragraph one of this petition.

10. By said will, after directing the payment of certain general and specific legacies, the testatrix, Elizabeth Ricarda Crenshaw, bequeathed to the complainants herein the rest and residue of all her property in fee-simple, to be divided among them in equal portions, and appointed her sons, R. Parker Crenshaw and Augustus P. Crenshaw, executors of the aforesaid will and directed that they be permitted to serve as such without bond; that subsequently to the death of Elizabeth Ricarda Crenshaw, administration was had upon her estate in the supreme court of the District of Columbia, holding an orphans' court, her estate fully administered, and her executors, to wit, R. Parker Crenshaw and Augustus P. Crenshaw, fully discharged after paying all the debts and obligations of the said Elizabeth Ricarda Crenshaw.

5 11. That immediately upon the death of the said Mary S. Millson, the said Elizabeth Ricarda Crenshaw, as the devisee named in the will of the said Mary S. Millson, as aforesaid, entered into possession of the property described in paragraph four, and received the rents and profits thereof to the time of her death, on, to wit, the 11th day of September, A. D. 1899, claiming the fee-simple title to the said property as devisee under said will of Mary S. Millson, and since the death of the said Elizabeth Ricarda Crenshaw your complainants, as her sole heirs-at-law, as well as devisees under her last will and testament, have been in possession of said property and in receipt of the rents and profits thereof; and complainants allege that the title of the said Elizabeth Ricarda Crenshaw to said property, as devisee under said will of Mary S. Millson, and of your complainants, as sole heirs-at-law and devisees of said Elizabeth Ricarda Crenshaw under said will, have never been controverted or brought into question.

12. Your complainants, being desirous of effecting a sale of said property while their title to said property is good in law, are advised by counsel that it is expedient to procure a judicial construction of the terms of the will and codicil of the said Mary S. Millson for the complete protection of any possible purchaser.

13. Your complainants aver that, as devisees under the last will and testament of Elizabeth Ricarda Crenshaw, as well as her sole heirs-at-law, they are seized in fee-simple of the property described in paragraph four hereof. They aver that they are without adequate remedy at law, and can only be protected by a decree of this honorable court.

6 Wherefore complainants pray:

1. That a writ of subpœna may issue out of and under the seal of this honorable court, directed to the persons named as defendants in the caption hereof and requiring them to appear and answer the exigencies of this suit.

2. That the terms of the above-mentioned last will and testament and codicil thereto of said Mary S. Millson may be construed by this honorable court, in so far as the same affect the title to the property described in paragraph four hereof and the interests of the parties therein, and that a decree may be passed declaring the

title to said property to be vested in the complainants as devisees and sole heirs-at-law of Elizabeth Ricarda Crenshaw, the devisee named in the said will of Mary S. Millson.

3. That in the event the court should hold that the title to said property did not pass and become vested in the said Elizabeth Ricarda Crenshaw by the devise to her under the will of Mary S. Millson, that then, and in that event, a sale of said property may be decreed by this honorable court and the proceeds thereof distributed among the parties entitled thereto according to their respective interests, as such interests shall appear upon an accounting to be had under the direction of this honorable court, and for the purpose of such sale that a trustee be appointed by this honorable court.

4. That the complainants have such other and further relief as to the court may seem proper and as the nature of the case may require.

The defendants are Richard P. McCormick, Margaret P.
7 Stoddert, Millson McCormick, David McCormick, Foxhall P. McCormick, Libbie McCormick, and Charlotte C. McCormick.

R. PARKER CRENSHAW,
Solicitor for the Complainants.

DISTRICT OF COLUMBIA, *ss:*

R. Parker Crenshaw upon oath says that he has read the aforegoing bill of complaint by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true and those stated upon his information and belief he believes to be true.

R. PARKER CRENSHAW.

Subscribed and sworn to before me this 28th day of March, A. D. 1901.

J. ARTHUR LYNHAM,
[SEAL.] *Notary Public.*

8 "EXHIBIT A."

WASHINGTON, D. C., *Sept.* 19, 1889.

In the name of God amen.

I Mary Sturman Millson make this and declare the same to be my last will and testament.

I desire to be buried by the side of my husband in his lot at Norfolk, Virginia, and that Mr. O'Rouke of Norfolk who put up the shaft to his memory and prepared his resting place, will prepare mine in like manner close to his side and will cut my name date of death &c. and the words "His wife" on the side of the shaft, left for that purpose where there is no carving and that he Mr. O'Rouke make a substantial curbing of stone or granite on the side of the lot next the wall—and at the foot of the lot.

It is my will, & I direct my executrix hereinafter named to have

a shaft, or a monument of some kind, costing about $350 to be put up in the lot in Berryville Clarke county Virginia, where my father, mother, and sister Margaret, lie buried with their names and the name of my sister Juliet, with the appropriate dates &c. carved upon it.

I leave to my sister Henrietta Millson my pearl-set breastpin containing her brother's likeness I give and bequeath my husband's watch which I have been wearing to Marion Millson Crenshaw my silver cross to R. Parker Crenshaw, my large painting of "Passaic Falls" to Augustus P. Crenshaw Jr. all the furniture &c. in my front chamber in Norfolk I give and bequeath to Nannie P. Crenshaw Reed my silver soup-ladle to Miles K. Crenshaw my centre table here, to Libbie Octavia Crenshaw I give my four Japanese tables to my cousin Virginia Ritchie. & my 2 small bisque
9 figures to Belle R. Harrison of Brandon. I leave to George Byrd Harrison our loved & kind physician & friend, $100—& to his son William Evelyn Harrison $100. I leave to my 3 nieces in Winchester namely, Margaret McCormick Stoddert $100—& to her daughter Bessie Stoddert $100—to Libbie McCormick $100 & to Charlotte McCormick $100. I leave to Roberta Parker $50—& to her sister Fanny Wynn $50 I leave to the Jackson Orphan Asylum in Norfolk $100 & to the Retreat for the Sick in Norfolk $200. All the rest of my estate & the residue of it, of every description whatsoever real personal and mixed I give devise and bequeathe to my sister Mrs. Elizabeth Ricarda Crenshaw to have and to hold the same absolutely and in fee-simple and hereby constitute and appoint my said sister executrix of this my last will and testament and request and direct that she shall be allowed to qualify without giving security.

In acknowledgment whereof witness my hand and the names of the witnesses hereunto subscribed this 19th day of September, 1889.

MARY S. MILLSON. [SEAL.]

Signed, sealed, published, and declared by Mary Sturman Millson, the above-named testatrix, as and for her last will & testament in the presence of us, who at her request and in her presence and in the presence of each other have subscribed our names as witnesses thereto.

RUTLEDGE WILLSON, 406 5*th St. N. W., Washington, D. C.*
RANDALL HAGNER, " " " " "
LEIGH ROBINSON, " " " " "

10 "EXHIBIT B."

Codicil to My Will of September 19th, 1889.

In reading over my will made on the 19th of September, 1889, I find that, by mistake, I left to Miles Crenshaw my silver ladle which I intended to give to my niece, Libbie O. Crenshaw, now Libbie O. Thompson, and did give to her as a wedding present, I,

therefore, now correct this, so as to give the said ladle to my said niece; and instead thereof give to my nephew Miles Crenshaw my beaded armchair. My dearly loved sister Henrietta Millson having gone before me to the better world, the breastpin with her brother's likeness heretofore bequeathed by me to her, I now give to my sister Mrs. A. P. Crenshaw, the same who is described in my will, as Mrs. Elizabeth Ricarda Crenshaw. My dearly loved cousin Belle R. Harrison of Brandon having also departed this life, the two small bisque figures heretofore given to her I now bequeath to my cousin Virginia Ritchie; and the four Japanese tables heretofore bequeathed to the latter, I now bequeath to my sister, the said Mrs. A. P. Crenshaw, I give a contribution of ten dollars for the memorial window to Mr. Jackson, and another contribution of ten dollars for the memorial window to Mr. Okeson both in St. Paul's church, Norfolk. I give to little Nannie C. Reed my two blue vases, and to little John Reed, the piece of furniture with the marble slab upon it, between the windows in the dining-room. My furniture in Norfolk, bought in for me at the assessment by Mr. Tazewell Taylor, and upon which I have paid the insurance &c. for more than twenty years, I give to my niece Nannie C. Reed, except in so far as her mother, my said sister Mrs. A. P. Crenshaw, may wish
11 to use or dispose of the same during her (my said sister's life).

All the rest and residue of my property and estate of every description whatsoever, not otherwise bequeathed, having been already devised and bequeathed to my said sister Mrs. A. P. Crenshaw, I need not say more on the subject.

July 17th, 1895.

MARY S. MILLSON.

EXHIBIT "C."

In the name of God amen—

I, Elizabeth Ricarda Crenshaw, make and declare this to be my last will and testament.

I desire that a plain but suitable monument be erected to the memory of my dear husband—and that my name also be placed thereon—

I give to my dear friend and physician George B. Harrison one hundred dollars as a token of my love and esteem.

I bequeath to my daughter Elizabeth O. Thompson the Japanese cabinet, which I have bought and paid for from my dear sister's estate as a token of gratitude for her tender care of me—and also the three large vases which my sister wished her to have—The crayons which were Elizabeth O. Thompson's work and hers at my death—My furniture I wish equally divided among my children except dear Nannie Reed who is provided for in this way but must share with my other children the china, glass, &c. this divis-
12 ion I wish done among themselves lovingly and quietly, and *and* I beg that my dear children will always be loving and

unselfish to each other in memory of their devoted mother who loves all equally well, and whose last prayer will be for them.—

I desire that the two thousand dollars left me by my brother Judge Richard Parker be divided between my two daughters Nannie P. Reed and Elizabeth O. Thompson, as it was my brother's wish—

The residue of my property I wish to be equally divided between my dear children—they to have the same in fee-simple, except the portion bequeathed to, my dear son Augustus Pemberton Crenshaw, which I leave him in trust for the benefit of the said Augustus Pemberton's children—Augustus P. Crenshaw, J. Meyers Crenshaw, and Elizabeth P. Crenshaw—my son Augustus Pemberton Crenshaw being given full power to control or dispose of the same as he may deem most advantageous to his children—I desire that those of my children who have had money loaned them shall account for the same in the division of said estate.

I hereby constitute and appoint my eldest sons—R. Parker Crenshaw and Augustus Pemberton Crenshaw—executors of this my last will and testament, and desire that they shall not be required to give bond—

In acknowledgement whereof witness my name, and the names of the witnesses hereunto subscribed.

ELIZABETH RICARDA CRENSHAW.

Signed, sealed, published, and delivered by Elizabeth Ricarda Crenshaw, the above-named testa—, as and for her last will and testament, in the presence of us, who, at her request and in her
13 presence and in the presence of each other, have subscribed our names as witnesses hereto.

EDSON B. OLDS.
DORSEY BROWN.
A. C. WEST.

EXHIBIT "D."

DISTRICT OF COLUMBIA, *To wit:*

On the 2nd day of October, 1899, came R. Parker Crenshaw and Augustus P. Crenshaw and made oath on the Holy Evangels of Almighty God that they do not know of any will or codicil of Mrs. Elizabeth R. Crenshaw, late of said District, deceased, other than the aforegoing instrument of writing dated ——, and that they found the same among her private papers, and said Elizabeth R. Crenshaw died on or about the 11th day of September, 1899.

R. PARKER CRENSHAW.
AUGUSTUS P. CRENSHAW.

Sworn to and subscribed before me—

M. J. GRIFFITH,
Notary Public, District of Columbia.

[SEAL.]

14 EXHIBIT "E."

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

OCTOBER 12TH, 1899.

This day appeared Dorsey Brown and Albert C. West, two of the subscribing witnesses to the foregoing last will and testament of Elizabeth Ricarda Crenshaw, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of their apprehenson, of sound and disposing mind and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testatrix and in the presence of each other and of Edson B. Olds, the other subscribing witness thereto, and to the best of their recollection said will was executed in the latter part of the year 1897 or the first part of the year 1898.

Test: LOUIS A. DENT,
Register of Wills.

15 EXHIBIT "F."

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

(Stamp.)

DISTRICT OF COLUMBIA, *To wit:*

I, Louis A. Dent, register of wills for the District of Columbia, and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the foregoing is a true copy of the original will of Elizabeth Ricarda Crenshaw, deceased, and the probate thereto, filed and recorded in the office of the register of wills for the District of Columbia aforesaid; and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 24th day of October, A. D. one thousand eight hundred and ninety-nine.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 28th day of October, anno Domini 1899.

[SEAL.] LOUIS A. DENT.

16 *Joint and Separate Answer of Def'ts.*

Filed August 26, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW ET AL., Complainants, *vs.* RICHARD P. McCORMICK ET AL., Defendants. } In Equity. No. 22133.

The joint and separate answer of the defendants—that is to say, of Richard P. McCormick, Margaret P. Stoddert, Millson McCormick, David McCormick, Foxhall P. McCormick, Libbie McCormick, and Charlotte C. McCormick—to the bill of complaint in this cause.

Said defendants, not admitting any right of the complainants or of any of them to maintain the bill of complaint in this cause, nor admitting any obligation of the defendants or of any of them to answer the same or any part thereof, but expressly saving and reserving to themselves and to each of them all and all manner of benefit or advantage of demurrer, of objection, of exception, or otherwise that can or may be had or taken to said bill, or to the many and manifold errors, uncertainties, imperfections, and defects in said bill contained, nevertheless for answer to said bill, or to so much thereof as said defendants are advised it is material or proper for them to make answer, answering, say:

1st, 2nd, & 3rd. Said defendants admit the allegations contained in the first, second, and third paragraphs of said bill.

4th, 5th, & 6th. Said defendants admit that Mary Sturman Millson died on or about March 2nd, A. D. 1897, in the District
17 of Columbia, and that at the time of her death she was a widow and was a citizen of the United States and a resident of the District of Columbia; and said defendants admit that said Mary Sturman Millson left surviving her as her only heirs-at-law both her sister, Elizabeth Ricarda Crenshaw, and these defendants—that is to say, Richard P. McCormick, Margaret P. Stoddert, Millson McCormick, David McCormick, Foxhall P. McCormick, Libbie McCormick, and Charlotte C. McCormick, children of Charlotte Fouscheé McCormick, who was a sister of said Mary Sturman Millson (said Margaret McCormick having died about fifteen years ago).

Further answering said 4th, 5th, and 6th paragraphs of said bill, said defendants say: These defendants are informed and believe that said Mary Sturman Millson died seized and possessed in fee-simple of parts of lots 41 and 42 of Francis W. Miller, trustee's, subdivision of part of "Pleasant Plains," subsequently called "Belle Vue," in the *county of Washington*, in the District of Columbia, beginning for the same at a point on the south line of Sheridan

street, distant 36 feet easterly from the northwest corner of said lot 41, and running thence easterly in the line of Sheridan street 36 feet; thence southerly 90 feet at right angles with Sheridan street; thence westerly and parallel with the south line of Sheridan street 36 feet, and thence northerly 90 feet to the place of beginning, according to the County Subdivision Book 6, folio 126, of the records of the office of the surveyor of the District of Columbia; but these defendants deny that said real estate and premises *is* in the *city of Washington*, and deny the allegation to *that* effect contained in said bill.

18 Both as to the real estate and premises or any part of or interest in the real estate and premises mentioned, described, or referred to in this paragraph of this answer, and as to any of the real estate and premises (if any such there be) described in the fourth paragraph of said bill, these defendants deny that said Mary Sturman Millson ever willed or devised the same or ever made or executed according to law any last will which willed, devised, disposed of, or had any operation or effect upon the same. As to whether or not said Mary Sturman Millson died leaving a last will and testament dated September 19th, 1889, or a codicil dated July 17th, 1895, and as to whether or not Exhibit "A" and "B" filed with the bill are true copies of such alleged will and alleged codicil, these defendants have no personal knowledge and can neither admit nor deny the allegations concerning these matters; but so far as the same are material these defendants call for a strict proof thereof. These defendants, however, charge that the real estate mentioned, described, or referred to in this paragraph of this answer and all the real estate in controversy was after-acquired real estate, and these defendants deny that said Mary Sturman Millson was seized and possessed thereof or of any part thereof until long after the execution of said alleged will of September 19, 1889. (See Exhibit "A" to the bill of complaint.) And these defendants further deny that it appears from said alleged will of September 19, 1889 (see Exhibit "A") that it was the intention of said alleged testatrix, Mary Sturman Millson, to devise property acquired after the execution thereof, and these defendants expressly deny that the same (see said Exhibit "A") either devised or had any operation or effect upon such after-acquired real estate or upon the property in

19 controversy. These defendants further deny that said alleged codicil of July 17th, 1895 (see said Exhibit "B" to the bill of complaint) was duly witnessed as required by law so as to devise, pass, operate upon, or affect real estate in the District of Columbia; they deny that it was witnessed at all as appears by and from said Exhibit "B," and these defendants expressly deny that said alleged codicil (see said Exhibit "B") either devised or had any operation or effect upon the real estate and premises or any part thereof described in this paragraph of this answer or upon the property in controversy.

7th & 8th. Said defendants are informed and believe that Elizabeth Richarda Crenshaw died on or about September 11th, A. D.

1899, and that the allegation in the bill of complaint that she died on that date is correct. These defendants, however, further answering paragraphs seven and eight of the bill of complaint, say they have no personal knowledge of the other allegations and statements contained in the seventh and eighth paragraphs of said bill,
(6)
and A can neither admit or deny the same, but so far as the same are material call for strict proof thereof.

9th. Said defendants are informed and believe that said Elizabeth Ricarda Crenshaw left surviving her as her only surviving children and only heirs-at-law the complainants R. Parker Crenshaw, Augustus P. Crenshaw, Susie Crenshaw, Elizabeth C. Thompson, widow, *née* Crenshaw; Nannie P. Reed, *née* Crenshaw; Miles K. Crenshaw, Mary Crenshaw, M. Millson Crenshaw, and Elizabeth J. Crenshaw.

These defendants are informed and believe that John F. Reed is not an heir-at-law of said Elizabeth Ricarda Crenshaw, as alleged by complainants, and believe complainants' allegation to
20 that effect—*i. e.*, that he is one of her heirs—to be erroneous.

10th. These defendants have no personal knowledge of the matters and things and facts alleged in the tenth paragraph of said bill, and can neither admit nor deny the same; but, so far as the same are material, call for strict proof thereof.

11th. These defendants, in answer to the eleventh paragraph of said bill, deny that Elizabeth Ricarda Crenshaw was devisee under said alleged will, or under any will, of said Mary Sturman Millson of the property described in paragraph four of said bill, or of the property heretofore described in this answer, or of the property in controversy; and deny that said Elizabeth Ricarda Crenshaw entered into possession of any such property or received rents and profits thereof *as devisee* under said alleged will or *as devisee* under any will of Mary Sturman Millson, or as alleged in the eleventh paragraph of said bill; but, on the contrary, these defendants assert and charge that said Elizabeth Ricarda Crenshaw should and must be held to have done so as one of the heirs-at-law of said Mary Sturman Millson and as a coheir of and as cotenant of these defendants.

And, further answering said eleventh paragraph of said bill, these defendants deny that complainant- or any of them entered into possession of any such property or received the rents and profits thereof, as alleged in said eleventh paragraph; but, on the contrary, these defendants assert and charge that complainants (or at least such of them as are heirs-at-law of said Elizabeth Ricarda Crenshaw) should and must be held to have done so as coheirs and as cotenants of these defendants.

These defendants, further answering the eleventh paragraph of said bill, and especially the concluding sentence of said para-
21 graph, say that the matters and things therein alleged are not correctly stated, and these defendants do not understand what complainants mean by the same and cannot understand how complainants can consistently, correctly, or truly assert or say that

the "title" of complainants and of said Elizabeth Ricarda Crenshaw under said alleged will of Mary Sturman Millson "have never been controverted or brought into question," since the complainants themselves shortly before the filing of the bill in this cause admitted that these defendants had a lawful right to one-half of said property, and in this connection these defendants expressly refer to a letter dated February 9, 1901, a copy of which is hereto annexed, marked for identification Defendants' Exhibit No. 1, and prayed to be taken as part of this answer.

The first knowledge these defendants had of any such real estate, or of their interest in it, was the receipt of said letter, which speaks for itself and is entirely inconsistent with the statements to the contrary contained in the bill of complaint in this cause.

12th & 13th. These defendants, in answer to the twelfth and thirteenth paragraphs of said bill, deny that complainants have the whole and entire fee-simple title to or are sole heirs of the property described in the bill or in this answer, and deny that complainants or any of them have any right, title, claim, interest, or estate at law or in equity or otherwise howsoever of, in, to, or out of any property in controversy beyond an undivided one-half interest in the real estate mentioned, described, or referred to in this answer, or more than such a half interest in any property in controversy, and these defendants deny that complainants, or any of them, by
22 any proper construction of said alleged will dated September 19, 1889 (see said Exhibit "A"), and of said alleged codicil dated July 17, 1895 (see said Exhibit "B"), are devisees of any such property or of any part thereof or interest or estate therein. They deny that said alleged will of September 19, 1889, operated to devise or pass after-acquired real estate. They deny that said alleged codicil of July 17, 1895, devised or had any operation or effect whatsoever upon real estate. These defendants deny that complainants are without adequate remedy at law.

These defendants, further answering said bill of complaint, say that said bill, among other things, is especially and fatally defective and bad on account of its duplicity; on account of seeking not only independent and unconnected relief, but inconsistent and contradictory relief; on account of alleging that the property in controversy is *in the city of Washington*, when, as a matter of fact, no such property is in said city; on account of alleging that said alleged will dated September 19, 1889, and said alleged codicil dated July 17, 1895, operated to devise the property in controversy to complainants' mother, when said will and codicil, copies of which are filed as exhibits to and made part of said bill (see said Exhibits "A" and "B"), conclusively show that they have no such operation or effect, and that they do not devise the property in controversy or any part thereof or interest therein; on account of want of jurisdiction to decree a sale on such a bill; on account of seeking a sale of the property in controversy and distribution of the proceeds of sale among co heirs, when said bill not only does not allege cotenancy, but, on the con-

trary, expressly denies the existence of any such cotenancy and
23 alleges that complainants are seized of the whole fee-simple title and estate, and when said bill nowhere alleges that the property in controversy is not susceptible of partition in kind, and on account of various other errors, irregularities, omissions, imperfections, and defects apparent upon the face of said bill, and these defendants ask and claim all the benefit and advantage on account thereof, upon this answer, to which they would be entitled had they specially demurred to said bill of complaint on account thereof, and ask and claim that this answer be treated as such demurrer, and given all the operation and effect of such demurrer.

And these defendants, having fully answered, pray that they may be hence dismissed with their reasonable costs.

RICHARD P. McCORMICK.
MARGARET PARKER STODDERT.
MILLSON McCORMICK.
DAVID McCORMICK.
F. P. McCORMICK.
LIBBY McCORMICK.
CHARLOTTE CARTER McCORMICK.

HOLMES CONRAD,
Sol'r for Defendants.

CITY OF WINCHESTER, }
State of Virginia, } *ss:*

—, the undersigned, having been first duly sworn according to law, do depose and upon oath say that *we* have read the foregoing answer by *us* subscribed and know the contents thereof, and that the facts therein stated of *our* own personal knowledge are true, and
24 those stated upon information and belief *we* believe to be true.

LIBBY McCORMICK.

Subscribed and sworn to before me this 20th day of August, A. D. 1901.

[SEAL.] JAS. B. BURGESS, *N. P.*

STATE OF VIRGINIA, }
County of Frederick, } *ss:*

I, T. K. Cartmell, clerk of county court of Frederick Co., which is a court of record in and for said county, do hereby certify that Jas. B. Burgess, N. P., Esq., whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for said county, residing in the said county, duly authorized to take the same; that I am well acquainted with the handwriting of said Jas. B. Burgess and verily believe that the signature to said certificate of proof or acknowledgment is

genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said county and court thereof, at Winchester, Va., this 21st day of August, 1901.

[SEAL.] T. K. CARTMELL, *Clerk.*

25 (DEFENDANTS' EXHIBIT No. 1.)

(Copy.)

1604 Q STREET N. W.,
WASHINGTON, D. C., *Feb.* 9, 1901.

Mr. David McCormick.

DEAR SIR: We, as executors of our mother's will, find ourselves under the necessity of addressing you, and your brothers and sisters, in regard to the settlement of a small piece of property left to our mother under the will of our aunt Mrs. Mary S. Millson. We had an offer of $2,400.00 for the property, which we consider a good offer, but in having the deed made out we found that, under the laws here, you all would have to sign as well as us; in other words, you are coheirs with us under Aunt Mary's will. This was a surprise but as it is the law it must be complied with.

The will of Aunt Mary was dated September 19th, 1889 and these houses were bought in 1895. We will quote a paragraph in Aunt Mary's will—"All the rest of my estate and the residue of it of every description whatsoever, real, personal and mixed, I give, devise and bequeath to my sister, Mrs. Elizabeth Ricarda Crenshaw to have and to hold the same absolutely and in fee-simple, and I hereby constitute and appoint my said sister executrix of this my last will and testament, and request and direct that she shall be allowed to qualify without giving security." Aunt Mary did not know that her will would not cover the real estate bought after her will was made, although the purchase was made by disposing of other property already willed. Neither did our mother ever think that the property was not hers absolutely, and until we tried to sell it we ourselves were unacquainted with the law of this District.

26 To put the matter briefly and plainly—you all have a lawful right to one-half of the above-mentioned property, and before it can be sold, you and your brothers and sisters will have to join with our mother's heirs in signing the deed of sale. We, for our part, would like to settle this matter up as speedily as possible, so if you will tell us what price you are willing to sell the property at, we will (if all agree) put it in the hands of an agent. We are not sure that the former offer of $2,400.00 can be secured again, but this is about the value. In writing to us please give the State and county in which you reside as it might save time in making the deed, also as we do not know the middle names of all of you it would be well to give your full name. In case we make a sale we would suggest that you appoint some one here to look into the value.

of the property for you, which consists of three small houses Nos. 507, 509, 511 Sheridan street, N. W., their renting value being about $9.00 each per month.

Yours very truly,

R. PARKER CRENSHAW,
AUGUSTUS P. CRENSHAW,
Representing the Heirs of Mrs. Elizabeth R. Crenshaw.

27 *Stipulation of Counsel.*

Filed October 9, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW ET AL., Complainants,
vs.
RICHARD P. MCCORMICK ET AL., Defendants.
} In Equity. No. 22135.

It is hereby stipulated and agreed by and between the undersigned that the property in controversy is situated in the *county* of Washington, District of Columbia, and not in the *city* of Washington, and that the description thereof on page 2 of the bill of complaint be and hereby is amended in this respect by substituting the word "county" for the word "city," as aforesaid, the description on pages 2 and 3 of the answer being correct.

2. That Complainants' Exhibits "A," "B," and "C" may be read as part of the bill of complaint with the same effect (and with such effect only) as if they were duly certified copies of said wills and codicil from the records of the supreme court of the District of Columbia, holding a special term for orphans' court business.

3. That the property in controversy was purchased and acquired by said Mary S. Millson *after* her said alleged will and *before* her said alleged codicil, and that the bill of complaint be and hereby is amended so as to so allege.

4. It is further stipulated and agreed that this cause shall
28 be heard on the bill of complaint (treated as amended, as aforesaid) and the answer of the defendants filed in this cause.

E. HILTON JACKSON,
Solicitor for Complainants.
HOLMES CONRAD,
Solicitor for Defendants.

Stipulation of Counsel.

Filed December 6, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW ET AL., Complainants,
vs.
RICHARD P. MCCORMICK ET AL., Defendants.
} In Equity. No. 22135.

It is hereby stipulated and agreed by and between the undersigned that the bill of complaint and answer in this cause be, and the same hereby are, further amended as follows:

1. Said bill and answer are respectively hereby amended by correcting and changing the name of defendants' mother from "Margaret McCormick" to "Charlotte Foushee McCormick" wherever she is erroneously mentioned or named as "Margaret McCormick" in said bill (see pages 2 and 3 thereof) and in said answer (see page 2 thereof).

29 2nd. Said answer is also hereby amended by inserting on the fourth line from the bottom of page three thereof, immediately after the words "strict proof thereof," the additional words "save that, so far as these defendants are concerned, upon present information and belief they neither question nor deny that said Exhibits "A" and "B" are true copies of such alleged will and alleged codicil, and they neither question nor deny that said alleged will of Mary Sturman Millson was signed by her and witnessed as shown (see said Exhibit 'A') on its face, and they neither question nor deny that said alleged codicil of Mary Sturman Millson was signed by her (but never attested or witnessed), as shown (see said Exhibit 'B') on its face."

3rd. Said bill is also hereby amended by adding at the end of the 4th paragraph thereof, immediately after the words "as a part of this bill," the words: "said real estate, *i. e.*, the property in controversy, was not acquired by said Mary Sturman Millson until after her said will, though it was acquired by her before her said codicil."

4th. Said answer is also hereby amended by adding at the end of the 8th paragraph thereof, immediately after the words "strict proof thereof," the additional words: "save that, so far as these defendants are concerned, upon present information and belief they neither question nor deny that said alleged will of Elizabeth Ricarda Crenshaw was signed by her and witnessed, as shown (see said Exhibit 'C') on its face."

30 5th. It is hereby further stipulated and agreed that this cause shall be heard upon the bill and answer as said bill and answer have been and are amended by the written stipulations in this cause.

E. HILTON JACKSON,
Attorney for Complainants.
HOLMES CONRAD,
Solicitor for Defendants.

Decree Dismissing Bill.

Filed December 18, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW ET AL.
vs.
RICHARD P. MCCORMICK ET AL. } No. 22135. Equity.

This cause came on to be heard on the bill, answer, and stipulations filed in the cause, and was argued by counsel for the respective parties and considered by the court; and it appearing to the court that the real estate described in the bill did not pass by the last will and testament of Mary Sturman Millson, or by the codicil thereto, and that the title to the same is not vested in the complainants, but descended to the heirs-at-law of said Mary S. Millson; and it appearing to the court that the prayer for partition is entirely inconsistent with the case made by the bill; that the tenants in common of said land are all adults, and that the bill lacks
31 the allegations that are essential to a bill for partition, it is ordered, adjudged, and decreed this 18th day of December, 1901, that the bill of complaint be, and it hereby is, dismissed with costs, to be taxed by the clerk.

A. C. BRADLEY, *Justice.*

Penalty of Appeal Bond Fixed.

Filed December 19, 1901.

In the Supreme Court of the District of Columbia.

R. PARKER CRENSHAW ET AL.
vs.
RICHARD P. MCCORMICK ET AL. } Equity. 22135.

An appeal having been noted in open court from the decree passed herein on the 18th day of December, A. D. 1901, the bond for said appeal is hereby fixed at $100.00.

A. C. BRADLEY, *Justice.*

Memorandum.

January 6, 1902.—Appeal bond filed.

32 *Order for Record.*

Supreme Court of the District of Columbia.

CRENSHAW *vs.* McCORMICK. } Equity. 22135.

The clerk will please make copy of entire record in this cause for Court of Appeals.

E. HILTON JACKSON,
Solicitor for Appellant.

33 UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 32, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 22135, equity, wherein R. Parker Crenshaw *et al.* are complainants and Richard P. McCormick *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 20th day of January, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1171. R. Parker Crenshaw *et al.*, appellants, *vs.* Richard P. McCormick *et al.* Court of Appeals, District of Columbia. Filed Jan. 21, 1902. Robert Willett, clerk.

IN THE

COURT OF APPEALS, DISTRICT OF COLUMBIA.

No. 1171.

R. PARKER CRENSHAW, AUGUSTUS P. CRENSHAW, ET AL., APPELLANTS,

vs.

RICHARD P. McCORMICK, MARGARET P. STODDERT, ET AL.

BRIEF OF APPELLANTS.

E. HILTON JACKSON,

Attorney for Appellants.

In the Court of Appeals of the District of Columbia.

R. PARKER CRENSHAW *et al.*
vs.
RICHARD P. MCCORMICK *et al.* } No. 1171.

Brief of Appellants.

STATEMENT OF THE CASE.

This is a proceeding in equity, brought by the appellants against the appellees to have construed the will and codicil of Mary S. Millson, deceased. The bill filed on the 20th day of March, 1901, alleges that Mary S. Millson departed this life on the 2nd day of March, 1897, being seized of certain realty more fully described in paragraph four of said bill, said property being in the *county* of Washington, and not city, as erroneously described in said bill, but accurately described in stipulation of counsel filed herein October 9, 1901. The bill also alleges that Mary S. Millson aforesaid died testate, leaving a last will and testament dated September 19, 1889, duly attested by three subscribing witnesses, and a codicil thereto dated July 17, 1895, said codicil being without subscribing witnesses. Elizabeth Ricarda Crenshaw, sister of Mary S. Millson aforesaid, was the residuary legatee and devisee in the last will and testament of Mary S. Millson dated September 19, 1889, as aforesaid. The complainants claim a fee-

simple title to said property under the aforesaid will and codicil of Elizabeth Ricarda Crenshaw. Defendants claim as heirs at law of Mary S. Millson, who left surviving her as sole heirs at law her sister, Elizabeth R. Crenshaw, and the defendants, who are children of Margaret McCormick, also a sister of Mary S. Millson, said Margaret McCormick having predeceased Mary S. Millson by about eleven years. It is conceded by stipulation of counsel filed October 9, 1901, that the property in controversy was purchased and acquired by Mary S. Millson after the execution of her said will and before the execution of her said codicil. By stipulation of counsel of December 6, 1901, solicitor for the defendants agreed not to question nor deny that Exhibits" A " and " B " are true copies of said alleged will and alleged codicil ; not to question nor deny that said alleged will of Mary S. Millson was signed by her and witnessed as shown on its face, and not to question or deny that said alleged codicil of Mary S. Millson was signed by her as shown on its face. The cause came on for hearing upon bill and answer as amended by written stipulations of counsel of October 9, 1901, and December 6, 1901, and presented the following questions :

First. Is the following language contained in the will of Mary S. Millson, dated September 19, 1889, sufficient to convey the after acquired realty more fully set forth in said petition :

> " All the rest of my estate, and the residue of it, of every description whatever, real, personal or mixed, I give, devise and bequeath to my sister Mrs. Elizabeth Ricarda Crenshaw, to have and to hold the same absolutely and in fee-simple, and hereby constitute and appoint my said sister executrix, etc. "

Second. In the event the aforesaid language is not sufficient to convey after acquired realty, would such language,

taken in connection with the following language contained in the unattested codicil of Mary S. Millson, dated July 17, 1895, be sufficient to convey the after acquired realty aforesaid?

> "All the rest and residue of my property and estate of every description whatsoever, not otherwise bequeathed, having been already devised and bequeathed to my said sister, Mrs. A. P. Crenshaw, I need not say more upon the subject."

The court below held that the aforesaid will and codicil were insufficient in law to pass said after acquired realty, and decreed accordingly.

ASSIGNMENT OF ERRORS.

1. The court erred in holding that the last will and testament of Mary S. Millson, dated September 19, 1889, was insufficient in law to pass the after required realty set forth in complainants' bill.
2. The court erred in not holding that the title to said after acquired realty was vested in the complainants under said last will and testament.
3. The court erred in dismissing bill of complainants.

I.

The above assignments may be resolved into the question whether it was the intention of the testator to dispose of all the real estate of which he might die seized.

The cardinal rule for the construction of wills, to which all others must yield, has been declared in Smith *vs.* Bell, 6

Pet. 68, 75, to be that the "intention of the testator expressed in his will shall prevail provided it be consistent with rules of law. * * * It is emphatically the *will* of the person who makes it and is defined to be the 'legal declaration of a man's intentions which he wills to be performed after his death.' These intentions are to be collected from his words and ought to be carried into effect if they be consistent with law."

The Act of Congress of January 18, 1887, provides as follows: "Any will hereafter executed, devising real estate in the District of Columbia, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall be deemed, taken and held to operate as a valid devise of all such property."

No presumption of a testator's intent to die intestate as to any part of his property is allowable when the words of the will may fairly convey the whole estate. This rule is founded upon the presumption that every man who sits down deliberately to make his will does not intend to leave any portion of his property in such a condition as not to pass by the will. The idea of any one deliberately purposing to die testate as to a portion of his estate and intestate as to another portion of it is so unusual in the history of testamentary disposition as to justify almost any construction to escape it. 2 Redfield on Wills, 235; Vernon *vs.* Vernon, 53 N. Y., 351: Underhill on Wills, Vol. 1, p. 79; Cushing *vs.* Aylwin, 12 Metcalf, 169; Pruden *vs.* Pruden, 14 Ohio State, 251; Given *vs.* Hilton, 95 U. S., 594.

The language above quoted from the will of Mary S. Millson is not only general in its description, but contains a residuary clause, to wit: "All the *rest* of my estate and the *residue* of it, of every description whatsoever, real, personal, or mixed, etc."

The construction of the residuary clause does not depend

upon particular property which the testator might have in his contemplation, but upon what the words he has used will embrace according to their ordinary import. Bland *vs.* Lamb, 5 and 6 Maddock, 250.

In Iowa the language of the statute is "property to be subsequently acquired may be devised when the intention is clear and explicit." In the case of Briggs *vs.* Briggs, 69 Iowa, 619, the following language appeared in the will: "Remaindar of my personal estate and whole of my real estate." The court held that a bequest in this form of the residue of the estate was sufficient to carry the residue of all the person owned at the time of death and that the above statute was enacted for the purpose of extending the operation of the rule making it applicable to real as well as personal property. This principle was followed in Cushing *vs.* Aylwin, 12 Metcalf, 169.

It may therefore be laid down as a general proposition that where the testator makes a general devise of real estate, especially by *residuary clause*, he will be considered as meaning to dispose of such property to the full extent of his capacity; and that such a devise will carry not only the property held by him at the execution of the will, but also real estate subsequently acquired of which he may be seized and possessed at the date of his death, provided there is testamentary power to make such disposition. 1 Redfield on Wills, pp. 385, 387; Underhill on Wills, 1 p. 75 *et seq.*; Hardenbergh *vs.* Ray, 151 U. S., 113; Wait *vs.* Belding, 24 Pick, 129, 136, 137; Burnside's Succession, 35 La., 708; Briggs *vs.* Briggs, 69 Iowa, 617; Paine *vs.* Forsaith, 84 Me., 71; Miss. Soc. *vs.* Mead, 131, Ill., 338.

It is clear that words which merely import but do not emphatically refer to time present, as a general devise or bequest of property of a particular genus, will generally

include all property of that genus or description to which testator is entitled at the time of death though acquired after the making of the will. L. Jarman on Wills, 326, 5th Ed.

II.

If there were any doubt as to whether the language of the will of Mary S. Millson of September 19, 1889, is sufficient to convey the after-acquired realty, that doubt is effectually removed by reference to language in the unattested codicil of July 17, 1895, which codicil was executed after the acquisition of the realty aforesaid :

"All the rest and residue of my property and estate of every description whatsoever, not otherwise bequeathed, having been already devised and bequeathed to my sister Mrs. A. P. Crenshaw, I need not say more upon the subject." In other words, it is competent for a testator to become his own lexicographer. It is not claimed that this unattested codicil would be sufficient to convey the after acquired realty, but simply that the language just quoted should under the rules of construction be read in connection with the will for the purpose of making it clear in what sense testator employed certain language in the will. A codicil is in its nature a part of the will and an explanation of the intention of the testator. Butler *vs.* Butler, 2 Mack, 96 ; Leavens *vs.* Butler, 8 Porter, 380.

Where a testator in one part of his will has recited that he had given a legacy to a certain person, but it has not appeared that any such legacy was given, the court has taken the recital as conclusive evidence of an intention to give by the will, and fastening upon it, has given the erroneous recital the effect of an actual gift. Weeds *vs.* Bristow, Law Rep., 2 Eq. Cases, 333 ; Atwood *vs.* Geiger, 69 Ga., 502.

When in the context of a will the testator has explained

his own meaning in the use of certain words, the court shall take that as their guide, without resorting to lexicographers to determine what these words ought to signify in the abstract or to adjudicate cases to discover what they may have been decided to mean under different circumstances. Carnagy and Wife *vs.* Woodstock, *et al.*, 2 Munford, 234; Darley *vs.* Martin, 13 C. B., 683 and 690.

The Act of Congress of January 18, 1887, was considered by this Court in the case of McAleer *vs.* Schneider, 2 App. D. C., 461, in which the Court was called upon to say whether such an expression as "all my belongings" was sufficient to convey after acquired realty. The Court held, however, that "belongings" referred only to personal property and consequently found it unnecessary to say whether the expression was sufficient to convey after acquired real estate. The other case in which this Court was called upon to interpret the effect of the foregoing act upon after acquired realty was that of Bradford *vs.* Matthews, 9 App. D. C., 438. The clauses of the will in that case material to its consideration, were:

"That within one year from my death, that my property, real, chattel and choses in action, be turned into cash." After several bequests or pecuniary legacies to different persons, it continues: "The remainder of my money, I direct shall be divided into two equal parts, one portion to be given to the Home for Aged Colored Women and Children, Eighth Street, Northwest, Washington, D. C., the other portion to be given to the Home for Aged Colored People at Baltimore, Md." It is submitted that this case is no precedent for the one before the Court, inasmuch as the appellants rely primarily upon the residuary character of the clause in the will, and it cannot be contended that the will, construed by the court in Bradford *vs.* Matthews contained even the *suspicion* of a residuary clause; on the contrary, the

language construed by the court was found in the *very first clause* following the preliminary statements usually found in wills.

It is therefore respectfully submitted that the decree of the court below should be reversed with costs.

E. HILTON JACKSON,
Solicitor for Complainants.

Court of Appeals, District of Columbia.

JANUARY TERM, 1902.

No. 1171.

R. PARKER CRENSHAW ET AL.

vs.

RICHARD P. McCORMICK ET ALS.

BRIEF FOR APPELLEES.

HOLMES CONRAD,
Solicitor for Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2340

Court of Appeals, District of Columbia.

JANUARY TERM, 1902.

No. 1171.

R. PARKER CRENSHAW ET AL.

vs.

RICHARD P. McCORMICK ET ALS.

BRIEF FOR APPELLEES.

The will of Mary S. Millson was made and published on the 19th day of September, 1889. By this will certain pecuniary legacies were bequeathed, and the rest of her estate was disposed of by the following clause:

> "All the rest of my estate and the residue of it, of every description whatsoever, real, personal and mixed, I give, devise and bequeath to my sister, Mrs. Elizabeth Ricardo Crenshaw, to have and to hold the same absolutely and in fee-simple," &c.

(This will is erroneously described in the bill as "dated September 19, 1899." Record, page 5.)

By an unattested codicil to said will, made and published on July 17, 1895, the testatrix made some alterations of her

will as to the disposition of certain personal estate, but by said codicil made no disposition of her real estate, merely reciting in the codicil that—

> "All the rest and residue of my property and estate of every description whatsoever, not otherwise bequeathed, *having been already devised and bequeathed* to my said sister, Mrs. A. P. Crenshaw, *I need not say more on the subject.*"

After the date of the will, and before the date of the codicil, the testatrix acquired the real estate which is the subject of contention in this cause. (See stipulation of counsel, paragraph 3, pages 16, 17, Record.)

The main question presented here is, Did this real estate, acquired after the date of the will, pass under either the will or the codicil?

It is obvious, from the language of the codicil, that it did not purport to pass any real estate whatever. It expressly declares that all the real estate the testatrix intended to devise had been "already devised." So, if this after-acquired real estate passed at all by devise, it must have passed under the will.

The case of *Smith et als. vs. Edrington* 8 Cranch, 66, brought before the Supreme Court of the United States a will made in Virginia after the passage of the act of the General Assembly of that State by which power was given to any person to devise by will any real estate which he might have at the time of his death. That court said, on page 70:

> "The rule in England as well as in Virginia at the time this law was passed, was, that a will, as to land, speaks at the date of it, and as to personal estate, at the time of the testator's death. *The law created no new or different rule of construction, but merely gave a power to the testator to devise lands which he might possess, or be entitled to, at the time of his death, if it should be his pleasure to do so.* The presumption is that the

> testator means to confine his bequests to land to which he is then entitled, and this presumption can only be overruled by words clearly showing a contrary intention."

In many of the States of this Union it has, since the date of that decision, been expressly provided by statute that wills of realty, as well as those of personalty, shall be construed to speak as of the time of the testator's death. It has not been so provided by any statute in force in the District of Columbia.

By act of Congress of January 17, 1887 (24 Statutes, 361, ch. 25, sec. 2), it was provided that—

> "Any will hereafter executed, devising real estate in the District of Columbia, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall be deemed, taken and held to operate as a valid devise of all such property."

This act has been construed and applied in the case of *Bradford vs. Matthews* (9 Appeal Cases D. C., pp. 441–447), the Court of Appeals of this District, speaking through Alvey, C. J., saying:

> "Prior to the act of Congress of Jan. 17, 1887, relating to this District (24 St., ch. 25, sec. 2) it was a well-settled principle of law that a will would transfer no land, unless the testator was entitled to it at the time he executed and published his will. The old statute of wills did not apply or authorize a testator to devise real estate, before the estate was acquired. As to real estate, the will only spoke, and had operation from the date of its execution, and not, as in the case of personalty, from the death of the testator, &c., &c. It has been argued for the appellants that the terms employed in the clauses of the will to which we have referred when construed with reference to the terms of the statute of 1887, are sufficient to indicate plainly the intention of the testator to devise his after-acquired

real estate, as that of which he was seized at the date of the will. But to this contention we cannot agree. It is very true, it is not necessary that there should be express terms employed in the will, in order to carry after-acquired real estate. But there must be either express terms employed, or such reasonable intendment or implication from the context of the whole will, as to leave no reasonable doubt as to the intention of the testator. This is the principle of construction in such case as the present, announced by this court in the case of *McAller vs. Schneider*, 2 Appeals D. C., 467. The heir is not to be cut off or disinherited upon any doubtful construction. As said by the Supreme Court of the United States in *Allen's Ex't'r vs. United States*, 18 How., 385, 392, quoting the language of Chief Justice Gibson in *Bradford vs. Bradford*, 6 Wharton, 244: 'The intention must be manifest, and rest on something more certain than conjecture. The court must proceed on known principles and established rules, not on loose conjectural interpretation, nor considering what a man may be imagined to do in the testator's circumstances. The principle is applicable in all its force, in a case like the present, in which the question goes to the birthright of those, who, standing in the place of the common-law heir, are not to be disinherited except by express devise, or, as it is said in 1 *Powell on Devises*, 199, by an implication so inevitable that an intention to the contrary cannot be supposed.' As will be observed, there is nothing in the provisions of the will referred to that would furnish the slightest intimation that the testator intended the will to operate upon after-required real estate. The language employed is quite applicable to the real estate of the testator owned by him at the date of the will, and it is no more comprehensive than that which might or would have been used if he intended only to devise what he then owned or possessed."

It is contended on behalf of the appellants here that it is manifest from the language employed in her will that Mrs. Millson "intended to devise property acquired after the exe-

cution of her will." The language relied on is that employed in the residuary clause of her will, viz:

> "All the rest of my estate, and the residue of it, of every description, whatsoever, real, personal and mixed, I give, devise and bequeath to my sister Mrs. Elizabeth Ricardo Crenshaw, to have and to hold the same absolutely and in fee-simple."

It is said that because this language is broad enough to embrace all the property of which the testatrix died seized, that therefore it must be construed as declaring her intention to dispose of real estate acquired after the date of her will.

But we have seen that this court has already held, in construing the act of Congress, in the case of *Bradford vs. Matthews*, where the language of the will was "that within one year from my death that my property, real, chattels and choses in action be turned into court," and then, after several legacies, providing "the remainder of my money I direct shall be divided into two equal parts," &c., that this language is quite applicable to the real estate of the testator owned by him at the date of the will.

And in the earlier case of *Smith vs. Edrington, supra*, the language of the will was "I bequeath the whole of my property," than which no language could be more comprehensive.

The rule of construction under the earlier statutes of wills in England and in this country was, that the heir-at-law would not be disinherited without "either express terms employed, or such reasonable intendment or implication from the context of the whole will as to leave no reasonable doubt as to the intention of the testator." That is, that every presumption would be made in favor of the heir-at-law, and that where the language of the will was broad enough to embrace as well the property owned by the testator at his death as that owned by him at the date of his will, the pre-

sumption would be that he intended to devise only that property owned by him at the date of his will, unless, from other language employed, it was evident that he had in mind and did actually intend that the language employed by him should extend to and embrace after-acquired property. This is the construction to be placed upon all wills made in the District of Columbia since the act of Congress of January 17, 1887. The other rule of construction, applied in those jurisdictions where, by express statute, all wills of realty are declared to operate and take effect from the date of the death of the testator, or where by such statute it is declared that "any estate or interest in real property, acquired by any one after the making of his or her will, shall pass thereby, unless it clearly appears therefrom that such was not the intention of the testator," is that every presumption will be taken against the heir-at-law; that the testator will be presumed to have intended to dispose by his will of all the property of which he may die possessed, and that it must clearly appear from the will that the testator did not intend to devise after-acquired property.

This latter rule is illustrated by the case of *Hardenburg vs. Ray*, 151 U. S., 112. In that case the will was made in 1872, and devised "all my right, title and interest in and to all my lands, lots, and real estate lying and being in the State of Oregon."

In 1882 the testator acquired a tract of land in Portland, Oregon, of which he died seized and possessed in 1886.

The statute in force in Oregon at the date of the will and at that of the death of the testator provided that "every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate real and personal, saving to the widow her dower."

In 1849 the legislature of Oregon adopted a statute of wills, copied from the Revised Statutes of Missouri. Prior to the adoption of this Missouri statute one construction had been placed upon this statute by the Missouri court of ap-

peals, and subsequent to such adoption a different construction was placed upon it by a series of decisions of the Missouri court. These later decisions gave to the statute the effect of passing after-acquired property. After these later decisions the supreme court of Oregon, in the case of *Gerrish vs. Gerrish*, 8 Oregon 353, held :

> "Our statute is an exact copy of the Missouri statute, and the courts of that State having been called on frequently to construe it, we must look principally, to the decisions of that State, to ascertain its proper judicial construction."

The Supreme Court of the United States held, in view of the Missouri and the Oregon decisions, "that the testator possessed the testamentary power to devise the after-acquired lands in controversy." The court did not consider it necessary to decide whether the Oregon act of 1891 was or was not merely declaratory of the existing law, the act of 1891 declaring "that unless it appeared clearly from the will of the testator, it was not his intention, such after-acquired real property would pass."

The decisions of the courts of last resort in the States of the Union construing the statutes of such States governing the devolution of titles in that State become "rules of property which the Federal courts cannot disregard, but must recognize and enforce, in all cases involving the ascertainment of such titles.

All the cases cited in the brief of appellants' counsel involve the construction of statutes or the application of judicial decisions of those States in which wills of real estate operate from the death of the testator or where by express statute it is provided that after-acquired realty passes under the will, unless the contrary intention clearly appears.

These cases can have no application in the District of Columbia, where the construction of wills and the power of

disposition by will of realty is governed by the act of Congress of January, 1887.

Counsel for appellants disclaimed at the hearing all intention to insist upon the unattested codicil as operating any devise of the after-acquired realty, but did insist that it should be weighed as evidence of the intent of the testator to make such devise by his will.

We are aware of no rule of evidence under which parol evidence can be admitted to show such intent except where an ambiguity appears on the face of the will; and, even in those cases, the evidence admitted must be that of contemporaneous declarations or memoranda which, through the inadvertence of the draftsman of the will, have been overlooked or neglected.

Counsel for appellants also disclaimed at the hearing any intention to insist upon the prayer for partition made in the bill, stating that the jurisdictional allegations necessary to such relief were not made in the bill.

It is accordingly submitted for the appellees that the decree of the lower court holding that under the law governing the devise of real estate in the District of Columbia the after-acquired realty did not pass under the will of the testatrix, and that because the relief prayed in the bill could not be granted the bill must be dismissed, should be in all respects affirmed.

HOLMES CONRAD,
Solicitor for Appellees.